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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12

13 **ASIS INTERNET SERVICES**, a California
14 corporation,

15 Plaintiff,

16 vs.

17 **MEMBER SOURCE MEDIA, LLC, et al.**,

18 Defendants.

19 CASE NO. CV-08-1321-EMC

20 **DEFENDANT MEMBER SOURCE**
21 **MEDIA, LLC'S OPPOSITION TO**
22 **ASIS INTERNET SERVICES'**
23 **MOTION TO FILE DOCUMENTS**
24 **UNDER SEAL**

25 **[In Chambers]**

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1 Local Civil Rule 79-5 states:

2 A sealing order may issue only upon a request that establishes that the
3 document, or portions thereof, is privileged or protectable as a trade secret
4 or otherwise entitled to protection under the law, [hereinafter referred to as
5 "sealable."] The request must be narrowly tailored to seek sealing only of
6 sealable material

7 As a public forum, "the Court has a policy of providing to the public full access to papers
8 filed in the Office of the Clerk." (Commentary to Local Civil Rule 79-5.) In ASIS Internet
9 Services' ("ASIS") motion to seal documents in opposition to Member Source Media LLC
10 ("Member Source")'s motion to stay ("Motion to Seal"), ASIS failed to provide any reason
11 why the emails at issue are privileged or protectable. Nor has ASIS sought to narrowly
12 tailor its request. ASIS does not even explain what portions of the emails at issue are
13 supposedly privileged or protectable. Even if there is some portion of the emails that
14 warrant protection, ASIS is required to seal just that portion, and to file the remainder for
15 public inspection.

16 Furthermore, there is no basis to believe that any portion of the emails is
17 privileged or otherwise protectable. All evidence indicates that the emails at issue in
18 ASIS's Motion to Seal comprise public information, which ASIS has affirmatively
19 disclosed on multiple occasions for the sole purpose of generating more spam litigation.
20 The only arguably protectable elements of the emails are the recipients' email addresses.
21 However, ASIS admits that these email addresses do not belong to active ASIS
22 customers (ASIS Opposition to Motion to Stay 2:17-22.) Accordingly, any supposed
23 privacy argument is irrelevant. Moreover, evidence indicates that ASIS has affirmatively
24 published these email addresses in bulk to email marketing websites for the sole purpose
25 of soliciting emails to generate new spam litigation. Thus, even if some privacy or other
26 privilege did once attach to those email addresses, ASIS has waived it.

27 ASIS has brought ten CAN-SPAM lawsuits to make money, not to protect the
28 interests of its handful of clients. ASIS wants to keep these emails addresses private so

1 it can continue to set traps and bring additional CAN-SPAM suits, all in hopes of
2 recovering millions of dollars in statutory damages. If ASIS is going to use the public
3 courts to adjudicate these supposed disputes, it should and must make public the bases
4 of its claims.

5 **CONCLUSION**

6 ASIS has no inherent right to file sealed documents. If ASIS is to make use of the
7 courts in furtherance of its CAN-SPAM litigation enterprise, it must abide by the rules. In
8 every meaningful respect ASIS's request fails to comply with the Court's rules regarding
9 sealed documents. For that reason, ASIS's request should be denied, and the filed
10 emails should be provided to the public.

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12 DATED: August 21, 2008

KRONENBERGER BURGOYNE, LLP

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14 By: /s/ Henry M. Burgoyne, III

15 Henry M. Burgoyne, III
16 Attorney for Defendant
17 Member Source Media, LLC